

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

1426 FIRST AVENUE LLC,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 18-2-21872-1 SEA

[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT

This matter came regularly for hearing on Plaintiff's Motion for Partial Summary Judgment. The Court has considered the record in this case, as well as the materials submitted by the parties in regard to this motion:

1. [2018] City of Seattle's Motion for Partial Summary Judgment and Other Relief;
2. [2018] Opposition to Motion for Partial Summary Judgment and Other Relief;
3. [2018] Declaration of Eric Forbes in Support of Opposition to Defendant's Motion for Partial Summary Judgment;
4. [2018] Declaration of John A. Tondini in Support of Opposition to Defendant's Motion for Partial Summary Judgment (and attached exhibits);
5. [2018] City of Seattle's Reply Regarding Its Motion for Partial Summary Judgment and Other Relief;
6. Plaintiff's Motion for Partial Summary Judgment;
7. Declaration of John A. Tondini in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);
8. Declaration of Richard Settle in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);

9. Declaration of Eric Forbes in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);
10. Declaration of Roger Forbes in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);
11. City of Seattle's Motion for Summary Judgment;
12. Second Declaration of Lisa Rutzick;
13. Second Declaration of Sarah Sodt (and attached exhibits);
14. Second Declaration of Lish Whitson (and attached exhibits);
15. City of Seattle's Response to Plaintiff's Motion for Partial Summary Judgment;
16. Declaration of Daniel Mitchell (and attached exhibits);
17. Plaintiff's Opposition to City of Seattle's Second Motion for Summary Judgment;
18. Declaration of John A. Tondini in Support of Plaintiff's Opposition to City of Seattle's Second Motion for Summary Judgment (and attached exhibits);
19. City of Seattle's Reply;
20. Local Civil Rule 7(b)(7) Affidavit;
21. Plaintiff's Reply in Support of Motion for Partial Summary Judgment;
22. Reply Declaration of John A. Tondini in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits); and
23. Declaration of Robert ("Bob") Watson in Support of Plaintiff's Motion for Partial Summary Judgment.

The Court finds that there are no genuine issues of material fact for trial in regard to the issues presented. Thus, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Partial Summary Judgment is Granted. Seattle Ordinance 125650 is hereby declared void and of no effect for the reasons presented in the motion including that it was an illegal spot zone, violated procedural due process, violated substantive due process under either the *Presbytery* standard or the rational basis standard, and violated equal protection under either standard including

1 the rational basis standard. The parties shall meet and confer and appear for a status  
2 conference to discuss remaining issues for trial.

3 Dated this 21<sup>st</sup> day of June, 2019.

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6   
Honorable Patrick Oishi

7 Presented by:

8 BYRNES KELLER CROMWELL LLP

9  
10 By /s/ John A. Tondini

11 Bradley S. Keller, WSBA #10665

12 John A. Tondini, WSBA #19092

13 1000 Second Avenue, 38th Floor

14 Seattle, WA 98104

15 Telephone: (206) 622-2000

16 Facsimile: (206) 622-2522

17 bkeller@byrneskeller.com

18 jtondini@byrneskeller.com

19 *Attorneys for Plaintiff*

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

1426 FIRST AVENUE LLC,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 18-2-21872-1 SEA

~~PROPOSED~~ ORDER DENYING CITY  
OF SEATTLE'S MOTION FOR  
SUMMARY JUDGMENT

This matter came regularly for hearing on City of Seattle's Motion for Summary Judgment. The Court has considered the record in this case, as well as the materials submitted by the parties in regard to this motion:

1. [2018] City of Seattle's Motion for Partial Summary Judgment and Other Relief;
2. [2018] Opposition to Motion for Partial Summary Judgment and Other Relief;
3. [2018] Declaration of Eric Forbes in Support of Opposition to Defendant's Motion for Partial Summary Judgment;
4. [2018] Declaration of John A. Tondini in Support of Opposition to Defendant's Motion for Partial Summary Judgment (and attached exhibits);
5. [2018] City of Seattle's Reply Regarding Its Motion for Partial Summary Judgment and Other Relief;
6. Plaintiff's Motion for Partial Summary Judgment;
7. Declaration of John A. Tondini in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);
8. Declaration of Richard Settle in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);

9. Declaration of Eric Forbes in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);
10. Declaration of Roger Forbes in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits);
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12. Second Declaration of Lisa Rutzick;
13. Second Declaration of Sarah Sodt (and attached exhibits);
14. Second Declaration of Lish Whitson (and attached exhibits);
15. City of Seattle's Response to Plaintiff's Motion for Partial Summary Judgment;
16. Declaration of Daniel Mitchell (and attached exhibits);
17. Plaintiff's Opposition to City of Seattle's Second Motion for Summary Judgment;
18. Declaration of John A. Tondini in Support of Plaintiff's Opposition to City of Seattle's Second Motion for Summary Judgment (and attached exhibits);
19. City of Seattle's Reply;
20. Local Civil Rule 7(b)(7) Affidavit;
21. Plaintiff's Reply in Support of Motion for Partial Summary Judgment;
22. Reply Declaration of John A. Tondini in Support of Plaintiff's Motion for Partial Summary Judgment (and attached exhibits); and
23. Declaration of Robert ("Bob") Watson in Support of Plaintiff's Motion for Partial Summary Judgment.

It is hereby:

ORDERED, ADJUDGED and DECREED that the City of Seattle's Motion for Summary Judgment is DENIED.

Dated this 21<sup>st</sup> day of June, 2019.



The Honorable Patrick Oishi

1 Presented by:

2 BYRNES KELLER CROMWELL LLP

3  
4 By /s/ John A. Tondini

5 Bradley S. Keller, WSBA #10665

6 John A. Tondini, WSBA #19092

7 1000 Second Avenue, 38th Floor

8 Seattle, WA 98104

9 Telephone: (206) 622-2000

10 Facsimile: (206) 622-2522

11 bkeller@byrneskeller.com

12 jtondini@byrneskeller.com

13 *Attorneys for Plaintiff*